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violate Norwegian neutrality. In a suit to condemn the captured vessel the Norwegian government comes in as claimant. *Held*, that restitution will be decreed, but without damages or costs. *The Düsseldorf*, [1919] P. 245.

When a vessel is illegally captured on the high seas the owner is entitled to restitution with costs and damages. *The Glen*, Blatchf. Prize Cas. 375; *The Fortuna*, 2 Jur. (N. S.) 71. See *The Zamora*, [1916] 2 A. C. 77, 111. But costs and damages are not awarded where there was probable cause for the seizure. *The Sir William Peel*, 5 Wall. (U. S.) 517; *The City of Mexico*, 25 Fed. 924. However, there is no real analogy between the case of wrongful seizure on the high seas and that of the capture of a lawful prize in neutral waters. In the latter case the owners of the captured vessel have no claim against the capturing power; the sole controversy is between the sovereign whose neutrality has been violated and the power which has violated it. *The Lilla*, 2 Sprague, 177; *The Adela*, 6 Wall. (U. S.) 266; *The Bangor*, [1916] P. 181. See 7 MOORE, DIG. INT. L., § 1211. The neutral power is entitled to restitution of the vessel and, if the infringement of its neutrality was deliberate, to damages and costs. *The Anna*, 5 Rob. 373. See 7 MOORE, DIG. INT. L., § 1334. But where the infringement was not intentional, the little authority which exists holds, with the principal case, that damages will not be awarded. *The Twee Gebroeders*, 3 Rob. 162. See *The Vrow Anna Catharina*, 5 Rob. 15, 16. The reason for this is not clear. The common law does not excuse trespass because of mistake. *Mishler Lumber Co.* v. *Craig*, 112 Mo. App. 454, 87 S. W. 41; *Chase* v. *Clearfield Lumber Co.*, 209 Pa. St. 422, 58 Atl. 813. The rule is the same in the civil law and the Roman law. See GRUEBER, THE LEX AQUILIA, 222; 2 BAUDRY LACANTINERIE, PRÉCIS DE DROIT CIVIL, 948. There seems to be no valid reason for a different principle for international trespasses. But see 1 OPPENHEIM, INT. L., § 154; 2 *Id.*, § 359. And the civil law writers do not recognize the principle laid down here by the British Admiralty Court. See 1 HAUTEFEUILLE, DES DROITS ET DES DEVOIRS DES NATIONS NEUTRES, 294.

NUISANCE — WHAT CONSTITUTES NUISANCE — UNDERTAKING ESTABLISHMENT AND MORGUE IN RESIDENTIAL DISTRICT. — The defendants opened an undertaking establishment and morgue in a dwelling-house in a purely residential district. The plaintiffs, neighboring property owners, seek to enjoin the maintenance of the business, alleging it to be a nuisance. The Washington Code defines a nuisance as anything such "as to essentially interfere with the comfortable enjoyment of life and property." (1915 REM. CODE, § 943.) *Held*, that the injunction be granted. *Goodrich* v. *Starrett*, 184 Pac. 220 (Wash.).

An undertaking business is clearly not a nuisance *per se*. *Westcott* v. *Middleton*, 43 N. J. Eq. 478, 11 Atl. 490. See *Densmore* v. *Evergreen Camp*, 61 Wash. 230, 231, 112 Pac. 255. However, many establishments which are not nuisances *per se* have been held to be such when conducted in residential districts so as to interfere with the comfort, well-being, and property-rights of the inhabitants of the vicinity. *Barth* v. *Psychopathic Hospital*, 196 Mich. 642, 163 N. W. 62 (insane asylum); *Rodenhausen* v. *Craven*, 141 Pa. 546, 21 Atl. 774 (carpet-cleaning shop); *Whitney* v. *Bartholomew*, 21 Conn. 213 (carriage factory). The law will not take cognizance of slight discomforts and inconveniences. *Lane* v. *Concord*, 70 N. H. 485, 49 Atl. 687; *Rhodes* v. *Dunbar*, 57 Pa. 274. But if the annoyance is such as to make the adjoining property less habitable by persons of ordinary sensibilities — thus decreasing the value of the property — it will be considered a nuisance. *Lowe* v. *Prospect Hill Cemetery*, 58 Neb. 94, 78 N. W. 488; *Susquehanna Fertilizer Co.* v. *Malone*, 73 Md. 268, 20 Atl. 900. Accordingly, an undertaking establishment and morgue with the morose succession of funeral services, the hysteria of mourners, the dread of contagion, and the annoyance from escaping deodorants, may well be held a nuisance, if

located in a purely residential section of the community. *Saier* v. *Joy*, 198 Mich. 295, 164 N. W. 507; *Densmore* v. *Evergreen Camp*, *supra*. But in any case it is a question of applying the legal standard to the particular facts of a given situation — to attempt to lay down detailed rules as to what constitutes a nuisance is futile.

OFFER AND ACCEPTANCE — BILATERAL CONTRACTS — SILENCE AS ACCEPTANCE. — A traveling salesman of the defendant corporation solicited and obtained from the plaintiff an order for certain goods which he was authorized to handle. The plaintiff heard nothing more from the order until he directed shipment two months later under the terms of the order. The defendant denied any acceptance. In the meanwhile the price of the goods had advanced considerably. The plaintiff sued for breach of contract and obtained judgment in the lower court. *Held*, that the judgment be affirmed. *Cole-McIntyre-Norfleet Co.* v. *Holloway*, 214 S. W. 817 (Tenn.).

For a discussion of this case, see NOTES, *supra*, p. 595.

PLEADING — PARTIES — JOINDER — COUNTERCLAIM AGAINST THE PLAINTIFF AND ANOTHER IN THE ALTERNATIVE UNDER THE JUDICATURE ACT. — In an action for goods sold and delivered, the defendant pleaded as a defense and also by way of counterclaim that the plaintiff committed a breach of an implied term of the contract by failing to pack the goods in such a way as to make them reasonably fit to stand the ordinary risks of transit by rail. In the counterclaim he joined the carrier, alleging against it that the goods had been so treated in transit that on their arrival they were in bad condition. The Judicature Act of 1873 provides that the courts shall have power to grant to any defendant "all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not . . . as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose" (36 & 37 VICT., c. 66, § 24 (3)). From an order refusing to strike out the counterclaim in so far as it joined the carrier as a defendant to the counterclaim, the plaintiff appealed. *Held*, that the order be affirmed. *Smith* v. *Buskell*, [1919] 2 K. B. 362.

Under the Judicature Act of 1873 and the Supreme Court of Judicature Rules, Order XVI, Rule 7, a plaintiff who is in doubt as to the person from whom he is entitled to redress may join two or more defendants in order to determine which, if any, of the defendants is liable. See 31 HARV. L. REV. 1034. The principal case is the converse of this proposition. A defendant who wishes to set up a counterclaim to a cause of action growing out of the same transaction as that which formed the basis of the plaintiff's cause of action, but who is in doubt as to whether the plaintiff or some third party connected with the transaction is liable, may join both as defendants to the counterclaim. See SUPREME COURT OF JUDICATURE RULES, Order XIX, Rule 3; Order XXI, Rules 11 and 15. The result is a logical development from the previous English decisions, and the case shows a willingness by the English Court effectively to carry out the purpose of procedural reform legislation; an attitude which has unfortunately not always been taken by the American courts.

PUBLIC SERVICE COMPANIES — FRANCHISES — PROTECTION OF PUBLIC SERVICE ENTERPRISES FROM COMPETITION. — A metropolitan street railway system had been established, under a general law providing that no two railroad corporations should occupy and use the same street or track for a greater distance than five blocks, and the franchise contained a similar provision. It sought an injunction to prevent the city from constructing a parallel system in